IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 123 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CO

Versus

ATMARAM CHHOTALAL

Appearance:

MR MG NAGARKAR for Petitioner

MRS QUEROBINA YAGNIK for Respondent No. 1

MR ST MEHTA APP for Respondent No. 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 17/10/2000

ORAL JUDGEMENT

This revision application under Section 397 read with Section 401 CrPC has been preferred by the complainant-Ahmedabad Municipal Corporation in Criminal

Case No. 24 of 1992.

It appears that one-Shri P.C Trivedi, a Food Inspector, had collected a sample of food article `Mava' from the accused Atmaram Chhotalal which was found to be adulterated. The complaint was, therefore, made before the learned Metropolitan Magistrate which was registered as Criminal Case No. 24 of 1992. In course of trial, pw-2 one Vrushesh Kantilal Patel deposed that the objectionable food article `mava' was bought from one Messrs. D.D Mavawalla. The defence witness no. 1 one Dilipbhai Rana also deposed that at the relevant time, he was serving with Messrs. D.D Mavawalla and the objectionable article `mava' was sold by Messrs. D.D Mavawalla to the accused on 2nd November, 1991. Pursuant to the said evidence brought on the records, the complainant made an application under Section 20-A of the Prevention of Food Adulteration Act and prayed that the said Messrs. D.D Mavawalla and one Harishbhai Jayantibhai, a partner in the said firm be arraigned as accused. The said application was rejected by the learned Metropolitan Magistrate, Court No. 8, Ahmedabad on 6th April, 1993. Feeling aggrieved, the complainant has preferred the present Revision.

The learned Metropolitan Magistrate was of the opinion that no case was made out against the said Messrs. D.D Mavawalla or the partner Harishbhai Jayantibhai. I am afraid, the learned Magistrate is not right. The prosecution was not supposed to prove the guilt against the said Messrs. D.D Mavawalla and Harishbhai Jayantibhai at that stage. The learned Magistrate was required to ascertain whether there was any material sufficient to prosecute the said vendor-Messrs. D.D Mavawalla and Harishbhai Jayantibhai. Considering the evidence on record, prima facie, it does appear that the objectionable article was sold to the accused by the above referred Messrs. D. D Mavawalla. In the event complainant proves that the objectionable article `mava' was sold to the accused by the said Messrs. D.D Mavawalla, the said vendor would be liable to be punished. The learned Magistrate, therefore, ought to have arraigned said Messrs. D.D Mavawalla and Harishbhai Jayantilal, a partner in the said firm, the respondents nos. 2 and 3 herein, as accused. It may be noticed that pending this Revision, the accused Atmaram Chhotalal died on 4th November, 1995 and the criminal case against him has abated. Nonetheless, if the offence is proved, the respondents nos. 2 & 3 would be equally liable to be punished under the Act.

In above view of the matter, the Revision Application is allowed. The impugned order dated 6th April, 1993 made by the learned Metropolitan Magistrate, Court No. 8, Ahmedabad is quashed and set-aside. The application dated 30th March, 1993 made by the complainant stands allowed. The respondents nos. 2 & 3 herein be arraigned as accused in the above Criminal Case No. 24 of 1992. Rule is made absolute.

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Prakash*